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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1966

NO. 337

ALEX K. EASTON, d/b/a
GEORGE EASTON FURNITURE CO.,

Petitioner,

v.

EDWARD EARL WEIR, II, a minor
and MURIEL A. WEIR as guardian of
the property of EDWARD EARL WEIR, II,
a minor,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO DISTRICT COURT OF APPEAL FOR THE SECOND DISTRICT.

ALEX K. EASTON

P. O. Box 3591
St. Petersburg, Florida 33731

Petitioner

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Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE
DISTRICT COURT OF APPEAL 2nd DISTRICT STATE OF FLORIDA

Petitioner was Appellant in the Appellate Court and Respondents were the Appellees.

Petitioner, Alex K. Easton, d/b/a George Easton Furniture Co., comes as his own counsel and prays that the court consider this petition to review the judgment of the Florida District Court of Appeal, Second District, opinion rendered June 10, 1966 and rehearing denied July 14, 1966. This judgment became final when the Florida Supreme Court denied my petition for rehearing on February 8, 1967. On May 9, 1967 an order was entered by Justice Black to allow me until July 8, 1967 to file this

petition for certiorari in this Court.

OPINIONS BELOW

The judgment of the District Court of Appeal of Florida 2nd District was made and entered on June 10, 1966. Without counsel my wife and I prepared a petition for rehearing and have been without counsel since that time. This petition was denied on July 14, 1966. The opinion and petition denial are attached as Appendix "A". In September 1966, we presented a petition for certiorari to the Florida State Supreme Court, this was dismissed December 15, 1966. The court allowed time for petition for rehearing which was presented January 27, 1967, this was denied February 8, 1967. Supreme Court of Florida dismissal and denial are under separate cover ordered sent direct from Supreme Court of Florida.

JURISDICTION

The judgment of the Florida District Court of Appeal was made June 10, 1966, rehearing denied July 14, 1966. State Supreme Court certiorari dismissed December 15, 1966. Petition for rehearing denied February 8, 1967. The jurisdiction of this Court is invoked under 28 U.S.C.§ 1257 (3). Final judgment or decrees rendered by the highest court of a State in which a decision could be had may be reviewed by the Supreme Court as follows:

(3) By writ of certiorari ..... or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under the United States.

A judgment of a State Appellate Court which the Supreme Court of the State may review by certiorari, becomes fina. when the latter denies the writ, and, if it involve a federal question, is thereupon reviewable here. Minneapolis, St. P. and S.S.M. Ry. Co. v. Rock, 49 S. Ct. 363, 279 U.S. 410, 73 L. Ed. 766, reh. den. 50 S. Ct. 79.

QUESTIONS PRESENTED

1. Where the defendant introduces no evidence in the record with regard to mitigation of damage, does a judgment of $16,000.00, contrary to the evidence in the record of damage in excess of $227,000.00, establish as a matter of law that the trial judge erroneously shifted the burden of proof of mitigation of damages to the plaintiff, and does this co nstitute a denial of a fair trial and due process of law under the Fourteenth Amendment, or 5th Amendment.

2. Whether the award of $16,000.00 was grossly inadequate as a matter of law where evidence showed damage in excess of $227,000.00 with this award would it be possible to be made whole and does this violate due process of law under the Fourteenth Amendment, or Fifth Amendment.

CONSTITUTIONAL PROVISIONS AND RULES INVOLVED

The Fourteenth Amendment, Section 1 to the Constitution of the United States provides as follows:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United State; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Fifth Amendment to the Constitution of the United States provides as follows:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

STATEMENT OF THE CASE

This is a case of landlord and tenant where the landlord hired an independant contractor to repair and reroof the leased warehouse. (See contract, defendant's Ex. F.) The law of the case has been stated by the District Court of Appeal in a prior appeal in this case:

> "After a review of the record in the instant case, it is undisputed that the landlord gratuitously or voluntarily assumed the duty of replacing the roof on its building which was occupied and under control of the tenant. The landlord was under no duty to make these repairs, but, having undertaken to do so, it was under a duty to see that no injury would be sustained by the tenant in the making of the repairs.
>
> "Under the decisions and authorities this court has considered only a portion of which are set forth herein, we conclude that the landlord could not absolve itself from liability by employing an independent contractor to perform the repairs."
>
> Easton v. Weir, 125 So. 2d, 115, 121

The landlord, Mrs. Weir, duly appointed legally constituted guardian of the property of Edward Earl Weir, II, a minor, testified that she knew the tenant used the warehouse for storage of furniture (Vol. III p. 177) which he sold each day from samples in his main retail furniture showroom. The petitioner sued for excess of 227,000 and was granted $16,000 damages by the judge sitting without jury, for injury to his furniture inventory stored in the warehouse and for loss of business and profit attendant thereto. The damages claimed were - 1. Loss of profit. 2. Depreciation of inventory. 3. Loss of good will. (a) Loss of major furniture lines. (b) Loss of credit. (c) Loss of quick turnover of stock. (d) Loss of advertising.

The petitioner, Alex K. Easton, * is owner of the forty year old, George Easton Furniture Co., having purchased it in 1956 from his father and has been manager in charge of all buying, advertising, and sales since 1942. This was a large furniture store dealing in a huge volume of merchandise, carrying everything from a mop to refrigerator to carpets. (Vol. II p. 315)

Repair and reroofing began on June 17, 1958, for one day only, then continued again from June 23, 1958 until completed on July 5, 1958.

* located in St. Petersburg, Florida

The warehouse was located across the street from the main store and constituted what had been two store buildings which had been converted into one by breaking through the wall between. It was 80 x 100 feet (Vol. I, p. 137) with high ceilings and a short balcony 80 x 38 feet (Vol. I, p. 137) built across the front.

The warehouse was full of furniture when the roof was repaired. This was verified by the testimony of the warehouse foreman, Mr. Dunn, (Vol. I, p. 146) and the petitioner (Vol. II, p. 334 & 382) and the landlord, Mrs. Weir who stated that the floor space was occupied and everything was stacked up. (Vol. III, p. 187). The petitioner testified there were only aisles between and we had to use ladders to get the stuff. (Vol. II, p. 334). Mr. Dunn testified that he had no place to move the damaged stock. (Vol. I, p. 129). He further testified that petitioner's showroom was full (Vol. I, p. 146) and petitioner's 7th Avenue warehouse, which had a low ceiling and in cubic area was much smaller, was full. (Vol. I, p. 138).

The warehouse where the damage occurred contained the bulk of the stock of furniture. Mr. Dunn testified that it had three-fourths of the total of the two warehouses. (Vol. I, p. 18). The better furniture, and most of the upholstered furniture was in this warehouse. (Vol. III, p. 15, 16 & 18).

Mr. Joe Dew, a well established furniture merchant with forty-nine years experience, testified that a furniture company's warehouse is a necessity in addition to your floor display. The time lag between buying and receiving is such that you could not stay in business unless you have adequate furniture in your warehouse. (Vol. II, p. 249).

The warehouse had an open beam ceiling. When the roofing contractor had his men repair the sheeting before they put on each section of roof, the workmen dropped dust, tar, and debris into the warehouse on the furniture stored therein. Mr. Howard, the roofing contractor, testified that this was usual policy to let it fall. (Vol. IV, p. 232).

The respondent landlord was charged with this knowledge.

In addition to this dirt and debris which was knocked through the roof into the building and on the contents inside, rain came into the building.

The defense witness, Joseph LaJoie, testified that his crew walked "all over" the roof on June 23, 1958, the first day he had charge of the job and that they carried 50 rolls of roofing felt which weighed sixty pounds each and buckets of liquid plastic which weighed 50 pounds each and stored it on the roof. The evidence is that the most serious damage occurred after this time and before the new roof was completed. (Vol. IV., p. 338, 339, 340, 341).

It rained in on June 21, 1958. Mr. Dunn testified he got the boys to run garbage cans and try to catch the water, put cardboard over the merchandise to keep the rain off. (Vol. I, p. 39). Sofas and chairs, headboards and bar stools got wet. He further testified he called in neighboring business people and firemen to see the mess - then swept the water from the floor, got mops and buckets and squidgeed it up, and called Mrs. Weir and Mr. Howard, the roofer. (Vol. I, p. 43, 44, 45). It rained on Sunday, June 22, 1958, merchandise got wet but the damage was minor compared to the "cloudburst" of June 25, 1958 in the late afternoon. Rain came in and ran all over the furniture and was ankle deep on the floors. (Vol. I, p. 53, 54, 55). Petitioner testified that the water came in like Niagara Falls, the water mixed with the dirt and debris on the furniture. (Vol. II, p. 333). Even though the water had not been as bad on the east side, debris was all over everything and water was mixed with this debris. (Vol. II, p. 347). Mr. Dunn called me over from the main store to see the situation. I, in turn, as I did each time it leaked, had him call Mrs. Weir. Mr. Dunn testified that Mrs. Weir said "Don't bother me Bob, call Mr. Howard, that is his business," and I said, "Well I can't have all this furniture getting wet all the time." "Don't bother me Bob I'm going to Canada. Take it up with Mr. Howard", which I did. (Vol. I, p. 58). Mr. Dunn called Mr. Howard and reported the damage and went out in the neighborhood to get some people from other businesses to come in to look at the mess. (Vol. I, p. 59).

At the time of the cloudburst of June 25, Mr. Dunn testified that we called a man from the Times (newspaper) who took pictures. (Vol. I, p. 60). These pictures were submitted for evidence in the court. PE 3 and 3A thru Q.

We covered with cardboard and a tarpaulin and cleaned as best we could (Vol. II, p. 357). There was another big rain on Saturday, June 28, Mr. Dunn went out and got the fire marshall, Mr. Gidley, to come in because water was running down the beams, dropping on the merchandise and on the electric wiring. He testified he turned off the main switch. (Vol. I, p. 67 & 68). Mr. Dunn testified that when the roofers were 2/3 to 3/4 finished they brought some plastic to cover the furniture, it kept a little water and dirt off. (Vol. I, p. 75 & 76). Later when the roofers were finished they came and got the plastic, dumping pieces of tar and dirt from the plastic over the floor and over the furniture. He further testified that the furniture had been damaged by dirt, water and debris prior to them bringing in the plastic. (Vol. I, p. 77).

On June 29, Sunday, it rained and Mr. Dunn testified that Mr. Easton phoned him and told him to come to the warehouse, that there was water pouring in over everything. (Vol. I, p. 71). Mr. Dunn testified that he tried to cover but there was nothing more that could be done. (Vol. I, p. 70, 71) There was more rain on the 30th of June. It damaged more furniture that had not been damaged previously. (Vol. I, p. 73). Mr. Dunn testified that the whole warehouse was affected by the dampness even where they were not directly exposed to water. Tables, chests, drawers, etc. swelled, tips of sofas, chairs and step tables all tarnished; box springs and mattresses had to be picked up from customers because they smelled musty. (Vol. I, p. 95, 96 & 97). He explained that the photographs which were presented to the court gave evidence that the tar and debris and dampness discolored the merchandise, within a week after it was damaged and you could not clean it. (PE-5, Vol. I, p. 99).

The landlord, acting on behalf of her son, a minor, verified that Mr. Dunn called her more than one time about the dirt and debris and rain. She testified that she did nothing other than tell Mr. Dunn to call Mr. Howard and on one occasion called him herself. (Vol. III, p. 182, 183 & 184). Mrs. Weir further testified that Mr. Dunn called her when he went

down and called the fire inspector when the water was dripping on the lines. (Vol. III, p. 193).

The damage occurred when the rains came into the warehouse on June 22, 23, 24 and 25 "cloudburst" 29 and 30. There were other rains after that but they only added to the mess. Mrs. Weir testified that she went to Canada on June 29, 1958, without going to the warehouse to observe the damage. She testified that, while in Canada, she received a letter from petitioner's attorney asking for advice before bringing suit. This letter she sent to her attorney here in St. Petersburg. She further testified that up until this time she had not discussed the damage with her attorney. (Vol. III, p. 184 & 185). She further testified that on September 9, 1958 when she returned from Canada, she came to the warehouse to see what the damage was. (Vol. III, p. 174).

Mr. Keller Peters, insurance adjuster for the roofer, testified that he came to the warehouse, 221 - 2nd Avenue South, on June 26, 1958, and inspected the roof of the building and talked to the assured's roofing foreman. (Vol. IV., p. 210).

Mr. Peters further testified that on June 27, 1958, he took sworn statements recorded by Mr. Lathrop, court reporter, of Alex K. Easton and Robert Dunn. (Vol. IV., p. 205). Mr. Dunn testified that Mr. Peters promised him a copy of his sworn statement but never did he get it. (Vol. I, p. 143). The petitioner testified a copy of his sworn statement was promised by Mr. Peters and he could not get it. Mr. Lathrop, the court reporter, testified that the petitioner came into his office to get the statement. (Vol. III, p. 200), and that Mr. Askew, his attorney, tried to get Mr. Easton's and Mr. Dunn's statement but Mr. Peters refused. (Vol. IV., p. 201). Mr. Lathrop further testified that he never supplied anybody with a copy but Mr. Peters. (Vol. III, p. 200). These sworn statements were identified as Defendant's Exhibits G and F (Vol. IV., p. 205).

Mr. Peters testified that he would look at the damage if the petitioner would produce it. This would mean moving it to a large warehouse and

spreading it out. Petitioner suggested that it would take four times the space to spread it out and would cost about $5,000. This statement was verified by the insurance adjuster, Mr. Peters, in his testimony. (Vol. III, p. 209). At this point, Mr. Peters told the petitioner, when he inquired what to do with the wet dirty furniture not to touch anything regardless of whether it rained on it or not. (Vol. II, p. 357 & 358). This is verified by Mr. Dunn's testimony when he said Mr. Peters told him to leave it there, let it get wet. (Vol. I, p. 145).

Mr. Peters own testimony is that, if the petitioner had proved the damage, he would not have borne the expense. (Vol. IV, p. 209 & 210).

Mr. Easton testified that there was no warehouse available, that he had made a survey all over the area of buildings that might be used for suitable warehouse space and that if it were, it would have taken four or five times the space to spread it and clean it. He testified that he considered moving the stock, that he considered how far it would have to be moved and how much space it would take. That a bonded warehouse would have been prohibitive in price. (Vol. III, p. 128 - Vol. III, p. 163 & 164). He testified further that if you have space you could spread it out and take necessary steps to get it dry. (Vol. II, p. 353).

The petitioner testified that water soaked furniture draws vermin and he had his brother, a professional exterminator, to come to the warehouse and treat the place as best he could, and he did. (Vol. II, p. 354).

The petitioner testified that he did not get answers to his request for advice or information concerning steps to be taken. He testified that he talked to Sam Mann, Sr. (respondent's attorney) twice. The first time he told of the awful mess that the roofer had made at the warehouse and asked for advice and told how Mr. Peters told him not to move anything in the warehouse; that he had written letters and no one would answer. He asked the attorney at that time what his advice would be. Petitioner also explained about the Federal Roofing Co. and said "Please do not pay Federal Roofing, as I understand that they only have $5,000 insurance and

explained that they had only $50,000 performance bond. At that time the attorney had not paid the roofer and said he would not pay it. (Vol. III, p. 42 & 43).

Mr. Easton testified that he asked Mr. Peters, the adjuster, and another representative of General Adjustment, also spoke to Sam Mann, Jr., (partner of the law firm), to Queen & Queen Ins. Co. who was the insurance carrier, asking for advice. He told Mrs. Weir the mess he was in and asked her please not to pay the roofer for the balance of the job, he told her this to protect himself and her. The first time he talked to her she had not paid the roofer. In another conversation, he testified she said she had paid them and had her reasons. (Vol. III, p. 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41.) He further testified that when he explained the mess at the warehouse to Mrs. Weir she said she had an independent contractor and was not liable but she was fully covered with insurance. (Vol. III, p. 58).

Mr. Easton, the petitioner, testified that in July, 1958, he had three bids on the contents of the warehouse but accepted none of them. (Vol. II, p. 381).

Mr. James Plunkett, one of the bidders, testified that he inspected the merchandise and the warehouse appeared to be full, that the furniture was water damaged and there was lots of litter and dirt covering the furniture, and it was in very bad condition. (Vol. I, p. 149). He identified pictures of the merchandise marked PE 1, 2 & 3. Mr. Harold Huber, a professional auctioneer, and second hand furniture dealer, testified that he had sold about 1500 pieces of used furniture or damaged furniture at public auction, (Vol. I, p. 199) that he had inspected the damaged furniture in the warehouse, that there was definite water damage, there was soot, looked like a roofing compound or something that was over most of the furniture. (Vol. II, p. 203). That there was dirt and debris all over the place, on the furniture, on the floors, on the walls, on the mattresses, on the wrappings of the furniture and on the cases that the case goods were in, on all of them. (Vol. II, p. 240). That he was familiar with the wholesale cost of such furniture, (Vol. I, p. 200)

that in his opinion, the damaged furniture had a fair market value of from 20% to 30% of its wholesale cost, and that on the basis of this opinion, he had offered to purchase it from the petitioner at a somewhat lower percentage in order to make normal profit when he resold it at retail in his furniture auction busines. (Vol. II, p. 204, 205, PE #9, Bid). He identified photographs of the damage. Applying the higher percentage of valuation given by the expert, 30%,to theknown wholesale cost of the furniture, $76,000.00, the furniture had a fair market value of $22,800.00 after it was damaged.

The assistant manager, Mr. William Townsend, who had charge of the perpetual inventory of the George Easton Furniture Co. testified that he took a special inventory of the merchandise stored in the warehouse that was under repair in July 1958. It revealed the wholesale value of the stored goods was $76,054.08. (PE 7, Vol. II, p. 285). There were 1,048 items listed in Book "A" of the inventory of the damaged furniture and book "A" includes only 26 out of 71 pages in the inventory.

Mr. Harold Wells, a C.P.A. and qualified witness for the defense testified as to business trends, that from 1953 to 1958, there was an incline each year, being better than the preceeding year, in 1958 there was a slight recession, recovered in 1959, tapered off in the middle of 1960 and had a sharp decline after that. (Vol. IV., p. 294).

Mr. Murray Lester, a prominent furniture dealer, witness for the defense, testified that we had a little recession in 1958 and 1959 was pretty good. (Vol. IV., p. 357).

The petitioner agreed that from 1949 to 1959 there was a general incline, there would be a little ups and downs like a scale here and there, but a general incline. There was a slight decline in 1960 and as during the Korean war in 1954, there was a drop and 1961 ran about the same. The figures are not before me but from all indications it was a slight increase above 1960. (Vol. III, p. 60). He further testified that he was familiar with business trends from 1950 to the present time (time of trial 1962) and kept up with business conditions nationally as reflected in the U. S. Dept.

of Commerce reports as he had to send reports to them each month and also kept up with the trends locally by comparing local with national trends, inquiring of local salesmen and other similar type merchants, (Vol. III, p. 59), also from the Davis Report, a National Standard book catering to furniture stores, (Vol. III, p. 64) and comparing with aggressive dealers in town. (Vol. III, p. 63). The area trend agreed with the general trend of business during this period. He testified his business followed the general trend between 1949 to 1958, up to about June 1958, thereafter it did not follow that pattern (Vol. III, p. 62).

The petitioner testified that he put the landlord, Mrs. Weir, on guard, and Federal Roofing on guard, and Queen & Queen, the insurance carrier, on guard and that he had done everything possible and no one would even answer one way or another, so he had to do something. (Vol. II, p. 381 - Vol. III, p. 160).

The petitioner testified that in October, November and December, 1958, he used a high pressure commercial vacuum cleaner, applying it on the furniture, chairs trying to get out the dust to clean as best he could, working every day. (Vol. II, p. 379).

In January 1959, the worse merchandise was sent to auctions, blending of the least damaged with new to get rid of the merchandise as seemed best, (Vol. II, p. 382 - Vol. III, p. 159 & 160), only minor repairs were made as there were no facilities for major repairs. He testified that the markup of the furniture is generally 80 to 125 per cent on the cost. The inventory was over $76,000.00 wholesale approximately $150,000.00 retail. (Vol. II, p. 384).

The petitioner testified that he had spent $285,000.00 in advertising over the last 13 years and that with the damage to his warehouse, the good will built up from advertising went down the drain. (Vol. III, p. 16 and 17). He testified the money for advertising spent at this time is wasted because of lack of stock; our sales have decreased from over $300,000.00 to $60,000.00 last year. $13,000.00 for advertising on $60,000.00 sales

is running the percentage rate very high; whereas $30,000.00 advertising on $300,000.00 sales would be a small percentage. (Vol. III, p. 19).

Mr. Easton testified that he was known as a buying dealer that would buy anything and everything in merchandising furniture. (Vol. III, p. 27), that he bought in carload lots which gave more profit because it was bought for less and the saving could be as much as 25%, this process would save freight and you would get better merchandise. (Vol. III, p. 23). He testified that his reputation after damage was a "has been", one who can't produce anymore in his line of business. (Vol. III, p. 27).

Mr. Easton testified that he lost his major furniture lines, (Vol. III, page 24, 25 & 26), for example; the Napier Furniture Co., from whom he had bought about $40,000.00 a year of low priced bedding. (Vol. III, p. 25). This salesman had not called but once or twice in three years. (Vol. III, p. 25). Mr. Townsend testified that the inventory of December 1961 did not include Napier. (Vol. III, p. 55).

The complete financial records of the business from 1949 through 1961 were before the court. (P.E. 8,8A,8B,8C,8D 9,9A,9B,9C,9D,9E

In the total inventory there were 5,163 items stored in the warehouse.

Mr. Steve Wilson, a public accountant witness for the respondent, testified that he examined certain records of the George Easton Furniture Co. (Vol. IV., p. 255) starting in September 1959 and on different occasions he returned and spent a total of 90 hours on the job (Vol. IV, p.256) examining and using the warehouse inventory P.E. #7, sales slips and daily recap sheet, general ledger (Vol. IV, p. 256 & 257) and made an analysis covering June 1958 to June 1959 using the sales slips for the fourth week of each month and tracing each item sold eadh day of the fourth week of each month, through the record of all sales of the George Easton Furniture Co. (Vol. IV, p. 259, whether or not the item sold was on the inventory. That he could not be sure that every item sold came from the warehouse inventory but took description and attempted to trace it to the warehouse inventory (Vol. IV. p. 263 & 264). He further testified that the sales slips corresponded with the record and that the books were accurate so far as he traced them

out. (Vol. IV., p. 264). These were marked defendant's exhibit No. 3. The judge made the statement that it was a rather extensive check (Vol. IV, p. 268). Mr. Wilson further testified there were 304 items sold at a price greater than the cost reflected on the inventory. These were sold at 65% above the cost and 17 items sold at less than cost, 16%. That 10 of these were from International (a furniture manufacturer, and in tracing on the purchases from the check book, two of these items were purchased in 1957 and the others in 1956. These papers were marked defendant's exhibit No. 16 in evidence.

The business in the normal year of 1957, before the damage to the warehouse showed sales amounting to $315,535. In 1961, the last full year before the trial, sales were $65,145. This is $250,390.00 less sales, or over an 80% drop. In comparing sales from:

January to June 1957	$138,114.00
with	
January to June 1958	134,081.00
Loss is nominal	$ 4,033.00

Then comparing sales from:

July to December, 1957	$177,421.00
with	
July to December 1958	107,553.00
Loss is drastic	$ 69,868.00

This gives a clear picture of the loss from the record that the drastic decline occurred after the disaster to the business in June 1958.

Month by month, comparative sales were presented to the court in evidence for a period of twelve years prior to trial. This is an example of <u>just one comparative month</u>, four years after disaster.:

Sales of August 1957	$ 22,139.80
Sales of August 1961	1,428.02
Total loss in one comparative month	$ 20,711.78

Then comparing complete inventory from:

1957	$101,044.00
with	
1961	13,046.00
loss in inventory four years after damage	$ 87,998.00

Land investment for expansion of the business purchased in 1957 could be considered as inventory, this would bring the inventory, the last complete year before the damage, to an all time high of $110,759.00.

Mr. Townsend testified the net inventory on March 15, 1962 was (Before the trial, ended) $ 11,240.79 (Vol. III, p. 52).

The average yearly net profit from the business for the years 1949 through 1957, prior to the damage, was $25,000.00.

In the profit statement just before and after the action arose there showed a drastic change:

Net Profit	1957	$20,643.00	(Last full year before damage)
	1958	$ 5,864.00	(Year damage occurred)
	1959	$ 6,202.00	
	1960	- $19,692.00	(loss)
	1961	- $26,883.00	(loss)

Mrs. Weir was landlord at both showroom and warehouse where the furniture was damaged. She testified that she wanted to retain Mr. Easton as a tenant, that she never worried about receiving her rent (Vol. III, p. 191)

Mr. Easton testified that where he had had three trucks, he now had one. Where he had had two cars, he now had one. (Vol. III, p. 20) He further testified that he could not go to the furniture markets, had no capital to work with (Vol. III, p. 19 & 20). He testified that prior to the damage he had discounted his bills which had amounted to as much as six to eight thousand dollars per year in discounts up until the time of the loss. (Vol. III, p. 22) He further testified that the business was on a cash basis, that debts to the business do not show upon the books when a business is on a cash basis. He testified that at the time of trial, he owed Mrs. Weir for back rent $5,400.00, on his show room, and $75.00 back rent for a warehouse at 7th Avenue South. Also, over $400.00 back rent on a warehouse he

moved into after vacating the damaged warehouse. (Vol. III, p. 46 & 47).

Mr. Dunn testified that the damage affected both warehouses. (Vol. I, p. 16). The record is silent as to any evidence presented by the defendant as proof that the plaintiff could have mitigated his damage better than he did, or that the petitioners proven damages would have been reduced if he had gone to the additional expense of doing what the defendant contended that he should have done to restore the damaged furniture.

There is no evidence in the record that there was sufficient warehouse space available, nor that it would have been profitable to move the damaged merchandise, unwrap it, clean it, and make it saleable without undue risk. There is nothing in evidence in the record that any expert witness had any similar experience where tar dust and water was combined and where an entire warehouse full of furniture was ruined.

The State Supreme Court of Florida on certiorari and petition for rehearing denied my petition, therefore, the question remains whether the District Court of Appeal was correct when they affirmed the judgment of the trial court denying my motion for new trial on damages wherein I urged two grounds:

1. The trial court erroneously cast the burden of proof upon the plaintiff as to the issue of mitigation of damages.

2. The award of $16,000.00 was grossly inadequate.

Petitioner was defendant in the District Court of Appeal by counsel, since that time, due to financial stress, he has been forced to be his own counsel. He comes, praying that the court consider his petition as he is not an attorney and the only knowledge of law that he has is that which has been gained from this case.

REASONS FOR GRANTING THE WRIT

In setting forth the reasons relied on for the allowance of the writ, each of the two questions presented will be separately considered.

I.

> The trial court erroneously cast the burden of proof upon the plaintiff as to the issue of mitigation of damages, thus denying me due process of law under the 14th Amendment.

In my motion for new trial addressed to the trial judge I asserted that his verdict demonstrated that he had erroneously cast the burden upon me with respect to mitigation of damages, when under the law the burden of proof rested upon the defendant to prove this affirmative defense. In other words the absence of proof on this defense was held against me because I had not disproved this charge made by the defendant against me. I argued this point in every other court also.

I maintain that the application of the correct rule of law is fundamental to due process under the 14th Amendment and that it is not required or expected that a litigant shall specially set it up and claim it in order to insist upon it.

The Florida Supreme Court holds that the application of the wrong rule is a denial of due process of law in the case of Mathews vs. Metropolitan Life Insurance Company, Fla., 89, So. 2d 641, the court goes on to say:

> We have the view that the duty of a trial judge to apply to admitted facts a correct principle of law is such a fundamental and essential element of the judicial process that a litigant cannot be said to have had the "remedy by due course of law", guaranteed by Section 4 of the Declaration of Rights of our Constitution, F.S.A., if the trial judge fails or refused to perform that duty.

Therefore, I was denied due process of law as provided by the Fourteenth Amendment, that no State shall make or enforce any law which shall abridge the privileges ..... nor deny to any person within its jurisdiction the equal protection of the laws.

The Supreme Court held that:

> While the right was not originally specially set up and claimed .... under the rule requiring the opinion to be set up with the record, it has frequently been held to be a sufficient compliance with the words "specially set up and claimed", that it was fully considered in the opinion of the court and ruled against the plaintiff. San José Land and W. Co. v. San José Ranch Co., 23 S. Ct. 487, 189 U.S. 177, 47 L. Ed. 765 (1903). Mallet v. North Carolina, 21 S. Ct. 730, 181 U.S. 589, 45 L. Ed 1015 (1901)

In this instant case the respondent assumed the burden of showing that the petitioner could have mitigated his damages and failed to do so. In order for them to reply upon this defense it is necessary for them to prove it.

The rule set down under "Presumption and Burden of Proof Regarding Mitigation of Damages", 134 ALR 242, 243 states:

> "The overwhelming weight of authority is to the effect that in actions for damages arising out of either breach of contract or tort, the burden is upon the party whose wrongful act caused the damages complained of to prove anything in dimunition of the damages, or, in other words, that the damages were lessened or might have been lessened by reasonable diligence on the part of the aggrieved party."
>
> Emphasis Added

The respondent entered contract with the roofer in full knowledge that the petitioner used the building to store furniture that he sold every day from samples in his showroom across the street. Therefore, it was the respondent's duty to prove that he could have mitigated better but it did not give the right for complaint where he did the best he could under the existing conditions. In the Case of Kellett Aircraft Corp. v. U. S. 186F. 2d 197 you held:

> He cannot complain where a choice has been required between two reasonable courses in order to mitigate damages after breach of contract, one whose wrong forced the choice cannot complain that one rather than the other choice was made.

The Appellate Court was silent as to any opinion about the way in which the petitioner mitigated the damage but the very fact of the grossly inadequate amount granted gives rise to the question; did I have due process of law?

The Supreme Court, in the case of Chicago Great Western R.R. Co. v. Rambo, 1936, 56 S. Ct. 693, 298 U.S. 99, 80 L. Ed 1066, reh den 56 S. Ct. 945, 298 U.S. 692, 80 L. Ed 1409 said:

> This court must examine the record and determine for itself whether as a matter of law the evidence is sufficient to sustain a finding of negligence.

In the case at bar, the respondent assumed the burden of showing that the petitioner could have mitigated his damages and failed to do so, yet there is no evidence in the record to prove that the burden was carried. In the case of McCarty v. United States (CA 5 Ala) 185F 2d 520, reh den and former op adhered to 187 F 2d 234 so clearly states:

> Where the party whose duty it is to perform a contract has equal opportunity for performance and equal knowledge of the consequences of non-performance, he cannot, while the contract is subsisting and in force, be heard to say that the plaintiff might have performed for him.

The Court of Appeal ignores the fact that the petitioner pleaded for advice which went unanswered for three months. Their silence indicated that they agreed that she had performed her duty.

In the case of Halliburton Oil Well Cementing Co. v. Millican, (CA5 Tex) 171 F 2d 426, Questo v. Dorado, 136 Cal App. 2d 332, 288 p. 2d 529, also Griffith v. Blackwater Boom & Lumber Co. 55 W Va. 604, 48 S.E. 442:

> The innocent party is not required to take extraordinary efforts to avoid the losses from the breach of contract, nor is he expected to incur risks or spend substantial sums of money to protect the defaulter.

The record shows that the petitioner testified that if another warehouse were available and sufficient help to move the merchandise quickly were available, and if it would have been profitable for him to have moved his entire warehouse, he would have done so.

I cite also the case of Georgia Kaolin Co. v. United States (CA5) 245 F 2d 148, American Can & Can v. Russelville Canning Co. (CA8) 191 F 2d 38; Re Kellett Aircraft Corp. (CA3 Pa) 186 F 2d 197 anno. 81 ALR 283.

> Under the doctrine of avoidable consequences, the injured person need not make extraordinary efforts or do what is unreasonable or impracticable in his efforts to minimize damages, reasonable diligence and ordinary care are all that is required to allow full recovery of all damages caused by the defendant's wrongful activity.

The court failed to consider the duty of the respondent to provide proof that this might have been done, therefore it follows that I was denied due process of law

In S. C. Reporters ed 592-595 under "appeal - ruling on burden of proof, review by Supreme Court of the U.S.

2. A ruling of a State Court upon the question of burden of proof may be reviewed by the Supreme Court of the United States if the ruling flows from the wording of the Bankruptcy Act and is connected with the substantive rights given to the parties by that act." Hill v. Smith 260 U.S. 592, 69 L. Ed 419.

By analogy - erroneously casting the burden of proof on me, regarding mitigation of damages denied me due process of law.

We see in the case of Nolen v. Wilson, 372 F 2d 15 (1967), this was a case of habeaus corpus proceedings by state prisoner. The United States District Court for the Northern District of California, Southern Division, Albert C. Wallenberg, J., denied relief and prisoner appealed. The prisoner volunteered without objection, that he had placed the gun in purse in automobile, was not prejudicial error or fundamental unfairness entitling defendant to habeas corpus. Affirmed.

> Trial error prejudicial to defendant does not necessarily transform otherwise fair trial into one who offends Fifth Amendment due process unless it has effect of converting which was otherwise fair trial into one which is repugnant to enlightened system of justice. U.S.C.A. Const. Amend. 5.

The case in the immediate instance, even though it is not a criminal case can find good constitutional law to apply. The petitioner volunteered to give all knowledge of the damage at its conception; to give all details of negligence of the contractor to the respondent so that respondent was aware, to beg her not to pay roofing contract or so that she might be protected as well as himself, to notify her attorney of the negligence of the contractor, yet no action was taken. This makes the denial of the Trial Court repugnant to enlightened systems of justice, and leaves a federal question of great importance unanswered.

The court in their silence condoned the use of comparison which were out of focus with the damages in the instant case.

The U. S. Court of Appeal states that:

> Guarantee of the Fourteenth Amendment is not that a just result shall have been obtained, but the result, whatever it may be, shall have been reached in a fair way.

Thus, the instant case presents constitutional questions of momentous import since the question is still unresolved in the Appeal Court of the State of Florida, 2d Dist.

II.

> The verdict of $16,000 was so grossly inadequate as to amount, to deprive me of my property without due process of law, contrary to the 5th Amendment, of the U. S. Constitution.

In my motion for a new trial addressed to the trial judge I asserted that his verdict of $16,000 was grossly inadequate as compensatory damages, and I maintain that he was thereby placed on notice that such a result was the legal as well as the practical equivalent of taking of my property from me without due process of law, contrary to the 5th Amendment. I argued the gross inadequacy of the damages in every other court also.

The court below left open the question of whether I was denied due process of law as stated in the United States Constitution, Amendment 5 - no person shall ..... be deprived of property without due process of law.

In the case of Barn Ballroom Co. Ainsworth, 67F. Supp. 299, Rev'd on other grounds 157 F. 2d 97 (1946):

> The right of a civilian engaged in a legitimate occupation is a property right of which he may not be deprived, except by due process of law.

In the instant case the court had before it the complete financial records of a business that had averaged over $25,000.00 net profit per year for 9 years prior to the damage. After the damage the record showed drastic loss. By 1961 the record proved that the business had suffered a loss of $26,883.00. Assets from other sources were thrown into the business on the assumption that justice would eventually be had. Therefore, I was deprived of my right of legitimate occupation when I was denied due process of law.

I cite the case of Longbotham v. Takeoka 115 Ore. 608, 239 P. 105, 43 ALR 1289, 15 Am. Jur. 788-9.

> On the question of damage to be allowed for injury ..... a dealer may state what they would be worth to him in their injured condition where it represents his idea of the market value of the instruments.

One who deals in damaged personal property which has a market value as such may give his expert opinion as to its market value even though he has also bid upon the property himself.

The trial judge put much effort into qualifying the appraisors in regard to whether they were bidding from a purely interested selfish motive or whether they had fair market value in mind when their bid was made. The judge put much stress on the petitioner's distress condition when he said to my attorney:

> "the question is what is the fair market value -- and the distress sale, as I pointed out, I didn't have in mind the ultimate auction but merely referring to a disposition of the property by Mr. Easton. It seems to me that he was in a distress situation, and the fair market value, as I understand the terms, means a sale without compulsion on either side. Now, what the rules are in a situation where there is some degree of compulsion by reason of distress, I am sure I don't know. (Vol. 1 p. 188)

The grossly inadequate award of $16,000.00 indicates that the court failed to consider the petitioner's distress condition, when he made the award; thus the courts denial of a fair award is the same as taking my property from me. I asserted that this award was grossly inadequate in the trial court when I made motion for a new trial and I argued it in the District Court of Florida on assignment of error. This courts

denial of a new trial is the same as taking property from me and is a denial of the 5th Amendment of the U.S. Constitution.

The Supreme Court of No. Carolina in the case of Upchurch v. Hudson Funeral Home, N.C. 140, SE 2d 17 held that the plaintiff who was self employed and was largely limited to supervision of work after receiving injuries, was properly permitted to testify as to the amount of his income before and after the accident.

The petitioner in the instant case testified that the records were his records of business and depicted the profit or loss of this business. These records gave evidence of the profits before the damage and the drastic loss after the damage.

These records could only have been ignored when the Appellate Court denied a new trial. By assignment of errors, I contended that the Trial Court's inadequate award of damages required a new trial. The court, by their denial, deprived me of my property without due process of law.

With respect to the unavoidable risk of uncertainty in fixing an amount, this Supreme Court, in an often quoted case, has stated:

> "The most elementary conceptions of justice and public policy requires that the wrongdoer shall bear the risk of uncertainty which is own wrong has created.
> Bigelow v. R. K. O. Radio Pictures, Inc. 327 U. S. 251, 66 S. Ct. 574, 580, 90 L. Ed. 652.

I quote from a criminal case of Buder v. Bell, 306 F 2d 71 (1962) U.S. Ct. app:

> That a denial of due process must be of such conduct that shocks the conscience and offends the sense of justice.

Even though this is a criminal case, this constitutional law may be applied. The award by the lower court in the instant case was so grossly inadequate that it is shocking and unbelievable and offends; therefore, I was denied due process of law.

The meaning of damages has been set forth in 25 C.J.S. 613, Damages, Sec. 1:

> In its legal sense the word "damages" is defined as meaning the compensation which the law will award for an injury done; a compensation, recompense, or satisfaction in money for loss or injury sustained.

American Jurisprudence under 22 Am. Jur. 2d Damages § 43 says:

> The doctrine of avoidable consequences applies to injuries to property. If the owner, however, makes reasonable efforts to avoid further loss, his recovery will not be reduced in a suit for damages.
> Kaze v. Compton (Ky) 283 SW 2d 204.
> If the reasonable action of the wronged party increased the damages, the tortfeasor is liable for the entire damage to the property. Murdock v. Blackwell 198 Okla. 171, 176 P 2d 1002.

I cite the case of Kings Electronics Co., Inc. v. U.S. 341 F. 2d 632 (1965) where the court held:

> That the measure of damages is not exact science calling for hard and fast rule, but is determined based upon facts and circumstances of each case.

The lower court failed to recognize that when a business has damage to the extent proven by the financial statements produced in evidence before the court; where stock and capital were so tied up that it was impossible to operate in the normal manner, the Court was duty bound to consider these facts.

The Supreme Court of Florida in the case of Fisher v. City of Miami, Fla. 172 So 2d 455 that Court stated that:

> In proceeding to a judgment here we should recall that the primary basis for an award of damages is compensation. That is, the objective is to make the injured party whole to the extent that it is possible to measure his injury in terms of money. Compensatory damages are recoverable as a matter of right. Florida East Coast Ry. Co. v. McRoberts, 111 Fla. 278, 149 So. 631, 94 A.L.R. 376.

To me this means that if damages are ascertained without doubt, you can get restitution for them or they are recoverable. It would be fallacious to assume a business could be made whole with a $16,000.00 verdict where the losses were proven to be in excess of $227,000.00.

I cite the case of New York Times v. L. B. Sullivan, R. D. Abernathy, 84 S. Ct. 710 (1964) wherein your Court expressed that:

> The Supreme Court's duty is not limited to elaboration of constitutional principles; the court must also in proper cases review the evidence to make certain that those principleshave been constitutionally applied.

The District Court of Fla. 2nd District having affirmed the judgment of $16,000.00 granted by the Trial Court when evidence is so undisputable from the record that the amount could not have made the petitioner whole, leaves the question unanswered - was I deprived of my property without due process of law.

CONCLUSION

For the reasons stated, this petition for certiorari should be granted.

Respectfully submitted,

Alex K. Easton

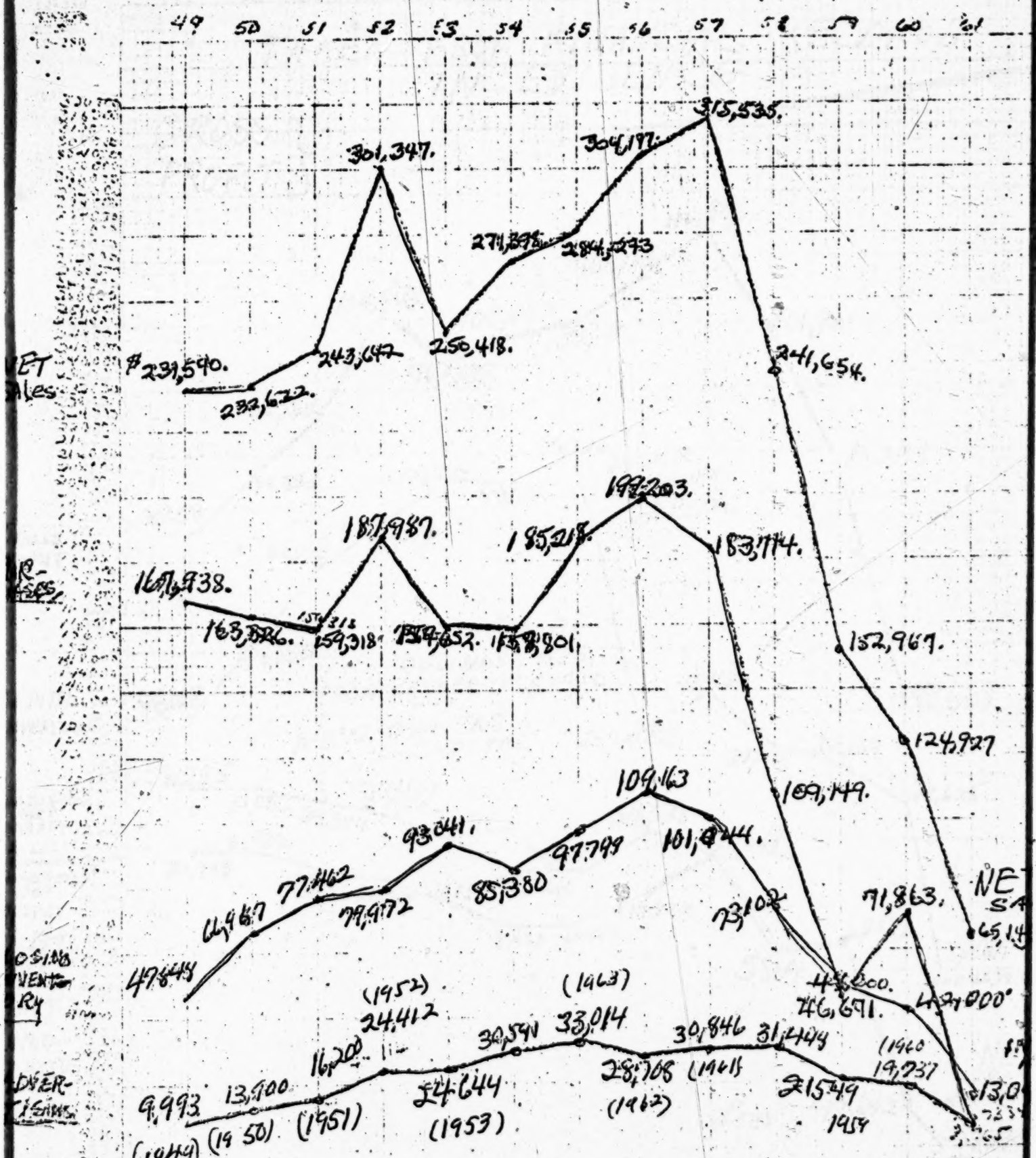
ALEX K. EASTON
P. O. Box 3591
St. Petersburg, Florida 33731

Finiancial Record in Evidence

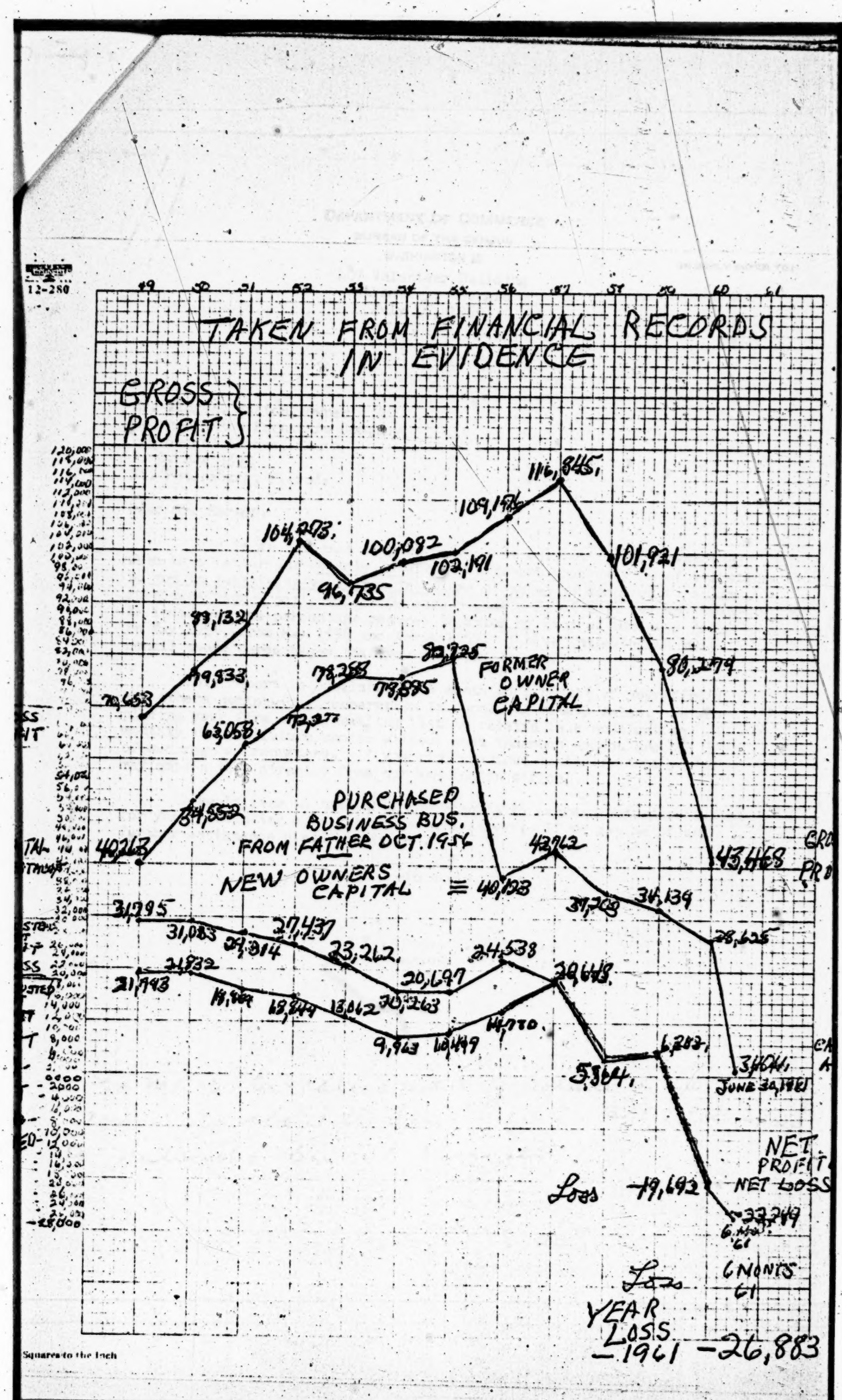
Graph made from Finiancial Record 1949 — 1961

Dollar

ANT. SALES - Purchases - Closing Inv. - Advertis



CLOSING INVENTORY MARCH 15, 1962
BEFORE TRIAL ENDED $11,240.


TAKEN FROM FINANCIAL RECORDS IN EVIDENCE
GROSS PROFIT
49 50 51 52 53 54 55 56 57 58 59 60 61
116,845.
109,176
104,203.
100,092
102,191
96,735
101,921
99,132
79,933
78,388
78,835
80,225
FORMER OWNER CAPITAL
80,279
79,653
63,058
72,227
PURCHASED BUSINESS BUS. FROM FATHER OCT. 1954
NEW OWNERS CAPITAL = 40,138
40,263
34,552
42,962
43,468
31,795
31,083
29,814
27,437
23,262
20,697
24,538
30,648
31,708
34,139
28,625
21,832
21,743
18,969
18,344
18,062
20,263
14,770
9,963
10,449
6,283
5,864
3,044
JUNE 30, 1961
NET PROFIT
NET LOSS
Loss -19,692
-33,249
6 MONTHS 61
Loss
YEAR LOSS 1961 -26,883

DEPARTMENT OF COMMERCE
BUREAU OF THE CENSUS
WASHINGTON 25

IN REPLY REFER TO:

407 Volunteer Building
Atlanta 3, Georgia
July 16, 1959

Mr. Alex K. Easton, Owner
George Easton Furniture Company
240 Second Avenue, South
P. O. Box 3591
St. Petersburg, Florida

Dear Mr. Easton:

This is in response to your request of July 8. I am forwarding with this letter our Monthly Retail Trade Report which may be of assistance to you in justifying your drop in volume of sales as compared to other furniture stores nationwide. On page 5, table 2, of this release there is indicated the percentage changes in sales by kind of business group in May 1959, from May 1958 and April 1959. I have indicated in red pencil those percentages that you may wish to use.

This report is published each month as a result of your firm's, and others nationwide, cooperation in supplying retail sales. We are placing your firm on our mailing list to receive this publication monthly for all future months without cost inasmuch as you are one of our regular reporters. If you wish previous months reports you may obtain them directly from our Washington office.

I would like to take this opportunity to express our appreciation for your continuing cooperation on this survey. If we can be of any further assistance please advise me.

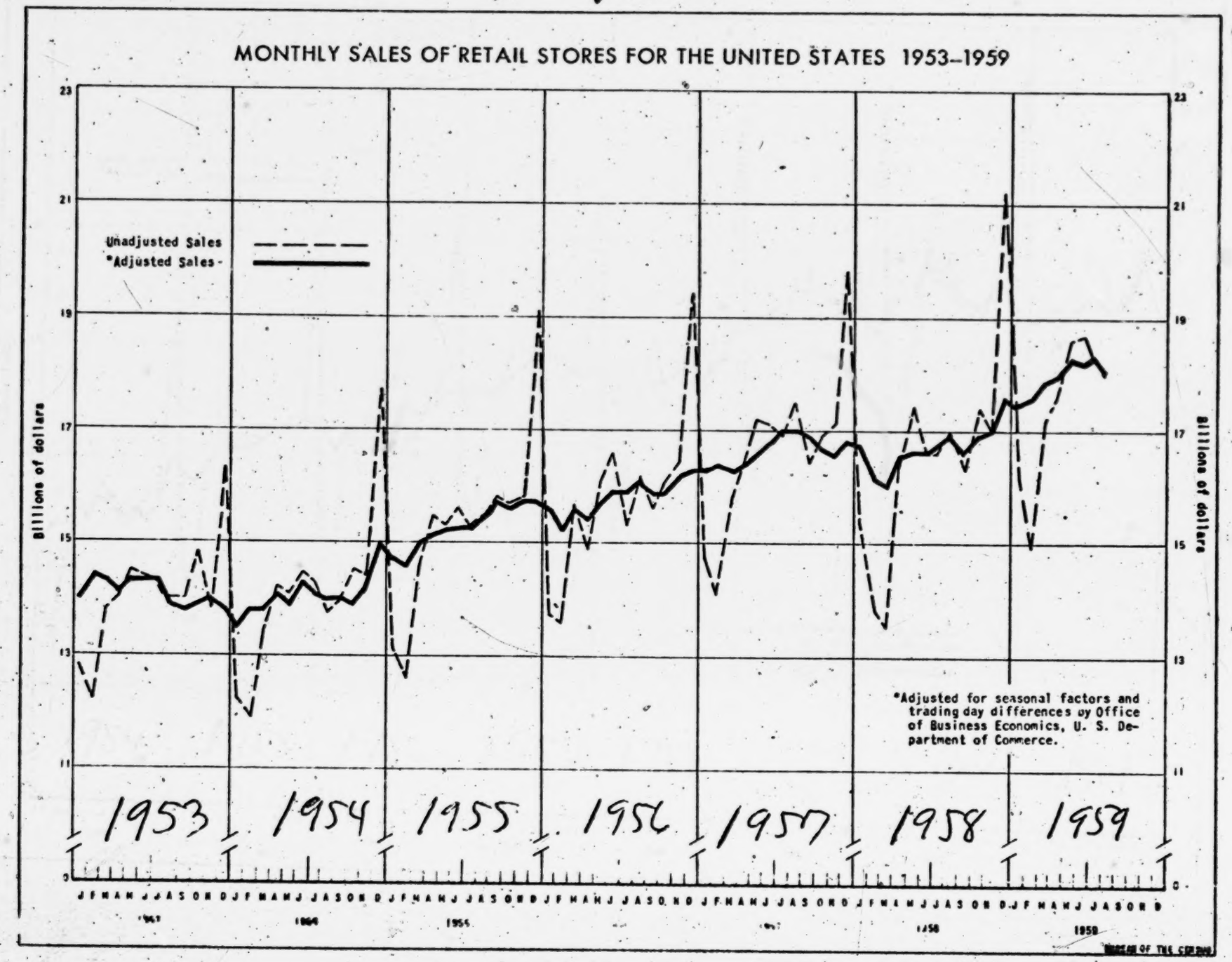
Sincerely yours,

Thomas J. McWhirter
Regional Field Director

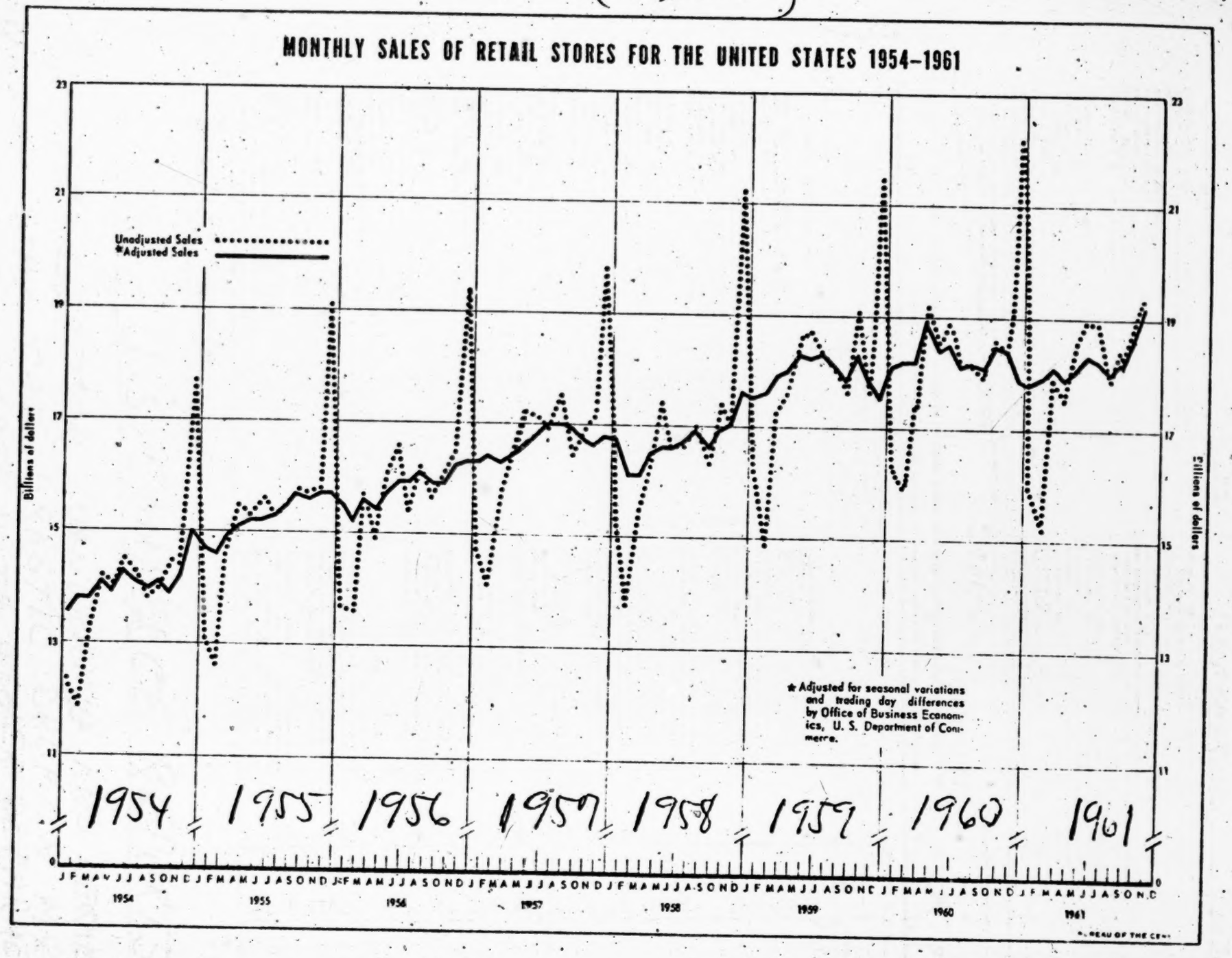
Encl.

Mr McWhirter called me re my assistance - July 8 - 1959.
Compared & explained the drop in sales - compared
to National & District averages

3 Copies Photo


MONTHLY SALES OF RETAIL STORES FOR THE UNITED STATES 1953–1959
Unadjusted Sales
*Adjusted Sales
Billions of dollars
23
21
19
17
15
13
11
9
*Adjusted for seasonal factors and trading day differences by Office of Business Economics, U. S. Department of Commerce.
1953
1954
1955
1956
1957
1958
1959
J F M A M J J A S O N D J F M A M J J A S O N D J F M A M J J A S O N D J F M A M J J A S O N D J F M A M J J A S O N D J F M A M J J A S O N D J F M A M J J A S O N D

(Photo)


MONTHLY SALES OF RETAIL STORES FOR THE UNITED STATES 1954–1961
Unadjusted Sales
*Adjusted Sales
Billions of dollars
23
21
19
17
15
13
11
0
★ Adjusted for seasonal variations and trading day differences by Office of Business Economics, U. S. Department of Commerce.
1954
1955
1956
1957
1958
1959
1960
1961

NOTE TAMPA BAY AREA PLUS 190% COMPARING 195
NOTE GEO. EASTON'S HUGE AGAINST 1959

Table 6.--PERCENTAGE CHANGES IN SALES OF STORES OF FIRMS OPERATING 1 TO 10 RETAIL STORES[1]--SPECIFIED STANDARD METROPOLITAN AREAS: AUGUST 1959

(Based on figures that are NOT ADJUSTED for seasonal factors or trading day differences)

DROP

NO RECESSION OR DEPRESSION

Standard Metropolitan Area	Percentage change in sales Aug. 1959 from July 1959	Standard Metropolitan Area	Percentage change in sales Aug. 1959 from July 1959
Atlanta, Ga.	-1	Lexington, Ky.	
Atlantic City, N. J.	+4	Los Angeles-Long Beach, Calif.	+5
Baltimore, Md.	-3	Milwaukee, Wis.	
Beaumont-Port Arthur, Tex.	+6	Minneapolis-St. Paul, Minn.	
Birmingham, Ala.	+13	New Orleans, La.	
Boston, Mass.	-2	New York-Northeastern New Jersey	
Buffalo, N. Y.	-5	New York portion	
Charlotte, N. C.	-3	New Jersey portion	
Chicago, Ill.		Philadelphia, Pa.	
Cincinnati, Ohio		Pittsburgh, Pa.	
Cleveland, Ohio	+6	Providence, R. I.	
Des Moines, Iowa		Richmond, Va.	
Detroit, Mich.		St. Joseph, Mo.	
Fort Worth, Tex.	-3	St. Louis, Mo.	
Houston, Tex.	+6	San Francisco-Oakland, Calif.	
Kansas City, Mo.	+5	Tampa-St. Petersburg, Fla.	
	-3	Washington, D. C.	

[1] Year-to-year percentage changes are not available.
Note: See page 15 for Standard Metropolitan Area definitions.

3 COPYS

1958-1959

Table 7.--PERCENTAGE CHANGES IN SALES OF DEPARTMENT STORES[1]--SPECIFIED STANDARD METROPOLITAN AREAS AND CITIES: AUGUST 1959

A Good

Note Sales no

(Based on figures that are NOT ADJUSTED for seasonal factors or trading day differences)

Area	Percentage change in sales			Area	Percentage change in sales		
	Aug. 1959 from-		8 mos. 1959 from 8 mos. 1958		Aug. 1959 from-		8 mos. 1959 from 8 mos. 1958
	Aug. 1958	July 1959			Aug. 1958	July 1959	
STANDARD METROPOLITAN AREA				Norfolk-Portsmouth, Va.	-4	-11	Depressio
Akron, Ohio	+1	-6	0	Oklahoma City, Okla.	+5	+18	+9
Albany-Schenectady-Troy, N. Y.	-1	-5	+3	Omaha, Nebr.	+2	+12	+4
Asheville, N. C.	+1	+4	+9	Peoria, Ill.	0	+21	+12
Atlanta, Ga.	+3	+20	+5	Philadelphia, Pa.	-2	+1	+6
Augusta, Ga.	+8	+11	+14	Phoenix, Ariz.	+5	+15	+10
Baltimore, Md.	-2	-18	+3	Pittsburgh, Pa.	+1	+23	+7
Baton Rouge, La.	-1	+10	+3	Portland, Oreg.	+13	+21	+12
Binghamton, N. Y.	-4	+7	+1	Reading, Pa.	0	0	+10
Birmingham, Ala.	-3	+11	+3	Richmond, Va.	-1	0	+1
Boston, Mass.	NA	NA	NA	Rochester, N. Y.	-2	+3	+4
Buffalo, N. Y.	-4	-4	+3	Sacramento, Calif.	+9	+10	+4
Canton, Ohio	-5	-5	+6	St. Louis, Mo.	+1	+16	+5
Chattanooga, Tenn.	+4	+7	+9	Salt Lake City, Utah	+14	+32	+5
Chicago, Ill.	0	+10	+4	San Antonio, Tex.	+7	+14	+5
Cincinnati, Ohio	+3	+5	+7	San Diego, Calif.	+10	+9	+5
Cleveland, Ohio	+3	+7	+8	Savannah, Ga.	+5	+5	+5
Columbus, Ga.	-4	+10	-2	Seattle, Wash.	+5	+27	+5
Columbus, Ohio	+5	-4	+9	Shreveport, La.	+3	+10	+5
Corpus Christi, Tex.	+1	+24	+2	South Bend, Ind.	+1	-2	+20
Dallas, Tex.	+14	+13	+12	Spokane, Wash.	+7	+20	+5
Denver, Colo.	+12	+24	+9	Springfield, Mo.	-7	+14	+12
Des Moines, Iowa	+5	+22	+6	Springfield, Ohio	-4	+18	+8
Detroit, Mich.	+5	+12	+12	Syracuse, N. Y.	-5	+19	+8
El Paso, Tex.	+1	+19	+5	Tacoma, Wash.	+5	+7	+8
Erie, Pa.	+9	+9	+5	Tampa-St. Petersburg, Fla.	+19	+7	+11
Evansville, Ind.	-7	+5	+1	Toledo, Ohio	NA	NA	NA
Flint, Mich.	+4	+22	+17	Trenton, N. J.	+3	+2	+7
Fort Wayne, Ind.	+7	+15	+13	Tulsa, Okla.	+5	+19	+7
Fort Worth, Tex.	+1	+10	+8	Utica-Rome, N. Y.	+7	+7	+11
Grand Rapids, Mich.	+2	+17	+9	Waco, Tex.	+8	+11	+10
Houston, Tex.	+16	+8	+13	Washington, D. C.	-1	+9	+8
Indianapolis, Ind.	+4	+10	+11	Wheeling, W. Va.-Steubenville, Ohio	-1	+26	+7
Jacksonville, Fla.	+12	+18	+20	Wichita, Kans.	-4	+11	+7
Kansas City, Mo.	+2	+11	+9	Worcester, Mass.	-3	+7	+6
Knoxville, Tenn.	+6	+4	+9	Youngstown, Ohio	-1	+1	+7
Lancaster, Pa.	+1	-4	+15				
Lexington, Ky.	+8	+15	+9	CITIES			
Los Angeles-Long Beach, Calif.	+12	+2	+13				
Louisville, Ky.	+5	+13	+7	Bridgeport, Conn.	-6	-21	
Macon, Ga.	-1	+8	+4	Bristol, Tenn.-Va.	+13	+3	
Memphis, Tenn.	+7	+6	+14	Duluth, Minn.-Superior, Wis.	+14	+20	
Miami, Fla.	+9	+5	+8	Minneapolis, Minn.	+11	+28	
Milwaukee, Wis.	+1	+1	+7	Oakland-Berkeley, Calif.	+8	+4	
Mobile, Ala.	+1	+1	+5	Portsmouth, Ohio	+4	+21	
New Orleans, La.	+1	-1	+6	Rome, Ga.	+6	+11	
New York-Northeastern New Jersey[2]	-3	-1	+3	St. Paul, Minn.	+3	+19	
New York City	-3	+2		San Francisco, Calif.	+5	+11	
Newark, N. J.	-7	+9		Springfield, Mass.	+5	+3	

NA Not available.
[1] Data are furnished by Federal Reserve Banks and [illegible]
[2] The breakdown shown does not include all sections of the area.
See page 15 for Standard Metropolitan Area definitions.

U.S. COMMERCE REPORTS

NOTE! LETTER WONDERING AND REQUESTING
NSWER WHY THE DRASTIC DROP IN MY
USINESS COMPARED WITH OTHER DEPARMENT
STORE SUCH AS OURS.

NOTE TAMPA BAY AREA - TAMPA ST. PETERSBG
PLUS 190 1960 OVER 1960
GEO. EASTON FURN CO. HUGE DROP - 80% LESS THAN 1957

Table 6. PERCENTAGE CHANGE IN SALES OF STORES OF FIRMS OPERATING 1 TO 10 RETAIL STORES --SPECIFIED STANDARD METROPOLITAN AREAS: NOVEMBER 1961

(Based on figures that are NOT ADJUSTED for seasonal variations or trading day differences)

Standard Metropolitan Area	Percentage change in sales[1] November 1961 from October 1961	Standard Metropolitan Area	Percentage change in sales[1] November 1961 from October 1961
Atlanta, Ga.	-9	Lexington, Ky.	-5
Atlantic City, N. J.	0	Los Angeles-Long Beach, Calif.	+3
Baltimore, Md.	0	Milwaukee, Wis.	0
Beaumont-Port Arthur, Tex.	+1	Minneapolis-St. Paul, Minn.	0
Birmingham, Ala.	+1	New Orleans, La.	+6
Boston, Mass.	+5	New York-Northeastern New Jersey	+7
Buffalo, N. Y.	0	New York portion	+7
Charlotte, N. C.	+8	New Jersey portion	+4
Chicago, Ill.	+1	Philadelphia, Pa.	+5
Cincinnati, Ohio	+4	Pittsburgh, Pa.	+5
Cleveland, Ohio	+3	Providence, R. I.	+10
Des Moines, Iowa	+4	Richmond, Va.	+4
Detroit, Mich.	+4	St. Joseph, Mo.	+10
Fort Worth, Tex.	+2	St. Louis, Mo.	+4
Houston, Tex.	-2	San Francisco-Oakland, Calif.	+1
Kansas City, Mo.	-5	Tampa-St. Petersburg, Fla.	+3
		Washington, D. C.	+8

[1] Year-to-year percentage changes are not available.
Note: See page 19 for Standard Metropolitan Area definitions.

1960 - 1961
Note Sales
Drop but no Depression

Table 7. PERCENTAGE CHANGE IN SALES OF DEPARTMENT STORES --SPECIFIED STANDARD METROPOLITAN AREAS AND CITIES: NOVEMBER 1961

(Based on figures that are NOT ADJUSTED for seasonal variations or trading day differences)

Area	Percentage change in sales			Area	Percentage change in sales		
	November 1961 from--		11 mos. 1961 from 11 mos. 1960		November 1961 from--		11 mos. 1961 from 11 mos. 1960
	November 1960	October 1961			November 1960	October 1961	
STANDARD METROPOLITAN AREA				Norfolk-Portsmouth, Va.	+14	+6	0
Akron, Ohio	+21	+23	+4	Oklahoma City, Okla.	0	+9	-9
Albany-Schenectady-Troy, N. Y.	+4	+26	0	Omaha, Nebr.	+2	+13	+13
Asheville, N. C.	+1	-1	+1	Peoria, Ill.	-2	-1	+4
Atlanta, Ga.	+4	+21	+-	Philadelphia, Pa.	+9	+28	+2
Augusta, Ga.	0	+5	-	Phoenix, Ariz.	+36	+8	+14
Baltimore, Md.	+7	+8	-1	Pittsburgh, Pa.	+8	+23	+1
Baton Rouge, La.	+9	+17	+4	Portland, Oreg.	+3	+14	+1
Binghamton, N. Y.	+6	+9	+-	Reading, Pa.	+13	+39	+2
Birmingham, Ala.	+9	+-	-	Richmond, Va.	+1	+24	+1
Boston, Mass.	+8	+18	+6	Rochester, N. Y.	+2	+-	+1
Buffalo, N. Y.	+7	+17	+1	Sacramento, Calif.	+17	+16	+11
Canton, Ohio	+7	+4	+2	St. Louis, Mo.	+6	+17	0
Chattanooga, Tenn.	-2	+2	0	Salt Lake City, Utah	+2	+14	+1
Chicago, Ill.	+8	+13	+2	San Antonio, Tex.	+13	+11	+4
Cincinnati, Ohio	+14	+28	+9	San Bernardino, Calif.	+3	+23	+2
Cleveland, Ohio	+10	+19	-1	San Diego, Calif.	+29	+14	+14
Columbus, Ga.	-3	+24	-3	Savannah, Ga.	-5	+7	+1
Columbus, Ohio	+11	+28	+3	Seattle, Wash.	+6	+18	+7
Corpus Christi, Tex.	0	+1	+5	Shreveport, La.	+17	+12	+7
Dallas, Tex.	+9	+19	+1	South Bend, Ind.	+15	+16	+1
Denver, Colo.	+4	+11	+6	Spokane, Wash.	+2	+8	+4
Des Moines, Iowa	+4	+15	+3	Springfield, Mo.	+7	+15	0
Detroit, Mich.	+3	+21	+3	Springfield, Ohio	+10	+20	+2
El Paso, Tex.	-2	+4	+5	Syracuse, N. Y.	+6	+11	0
Erie, Pa.	0	+14	+3	Tacoma, Wash.	+9	+7	+1
Evansville, Ind.	NA	NA	NA	Tampa-St. Petersburg, Fla.	+10	+19	+1
Flint, Mich.	+3	+17	+5	Toledo, Ohio	+2	+22	0
Fort Wayne, Ind.	+6	-3	+1	Trenton, N. J.	+7	+11	0
Fort Worth, Tex.	+8	+15	+2	Tulsa, Okla.	+7	+9	+1
Grand Rapids, Mich.	+-	+18	+7	Utica-Rome, N. Y.	-1	+11	+1
Houston, Tex.	+16	+5	+5	Waco, Tex.	+2	+14	0
Indianapolis, Ind.	+3	+14	+3	Washington, D. C.	+10	+14	+4
Jacksonville, Fla.	+10	+3	+7	Wheeling, W. Va.	+5	+34	+3
Kansas City, Mo.	0	+11	+-	Wichita, Kans.	+3	+14	+2
Knoxville, Tenn.	-1	-15	+6	Worcester, Mass.	+10	+23	+1
Lancaster, Pa.	+1	+22	+2	Youngstown-Warren, Ohio	+5	+16	+6
Lexington, Ky.	0	-1	2				
Los Angeles-Long Beach, Calif.	+8	+23	+-	CITIES			
Louisville, Ky.	+6	+12	+	Bridgeport, Conn.	+14	+23	+2
Macon, Ga.	+7	+21	-3	Bristol, Tenn.-Va.	+1	+8	+2
Memphis, Tenn.	+8	+16	-2	Duluth, Minn.-Superior, Wis.	+7	+5	+2
Miami, Fla.	+6	+5	+-	Minneapolis, Minn.	+6	+4	+2
Milwaukee, Wis.	+4	+17	+-	Oakland-Berkeley, Calif.	+4	+17	+1
Mobile, Ala.	+6	+18	0	Portsmouth, Ohio	+1	+13	+2
New Orleans, La.	+4	+17	+1	Rome, Ga.	+1	+4	+2
New York-Northeastern New Jersey[1]	+10	+16	+1	St. Paul, Minn.	+6	+7	+2
New York City	+9	+12	+1	San Francisco, Calif.	+4	+11	+2
Newark, N. J.	+5	+22	-4	Springfield, Mass.	+9	+13	+2

[1] The breakdown shown does not include all portions of the area. NA Not available.
Note: See page 19 for Standard Metropolitan Area definitions. Data are furnished by Federal Reserve Banks and subject to revision.

+178

NOTE OFFICIAL UNITED STATE
COMMER REPORT - NOTE U.S. ~~ED~~ LETTER
WONDERING WHAT WAS WRONG WITH
OUR BUSINESS COMPARING ~~COMP~~
Competition

IN THE
SUPREME COURT OF THE UNITED STATES

NO. 337

ALEX K. EASTON, d/b/a
GEORGE EASTON FURNITURE COMPANY,

Petitioner,

v.

EDWARD EARL WEIR, II, a
minor and MURIEL A. WEIR as
guardian of the property of
EDWARD EARL WEIR, II,
a minor,

Respondents.

RESPONDENTS' BRIEF

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STATEMENT OF THE CASE

In this brief, petitioner, Alex K. Easton, d/b/a George Easton Furniture Co., who was the plaintiff in the Sixth Judicial Circuit in and for Pinellas County, Florida, appellant in the District Court of Appeal, Second District of the State of Florida, and petitioner in the Supreme Court of Florida, will be referred to as the petitioner. Respondents, Edward E. Weir II, a minor, and Muriel A. Weir, as guardian of the property of Edward E. Weir, II, who were the defendants in the Sixth Judicial Circuit in and for Pinellas County, Florida, appellees in the District Court of Appeal, Second District of the State of Florida, and respondents in the Supreme Court of Florida, will be referred to as the respondents.

Respondents cannot accept the statement of case as contained in petitioner's petition for a writ of certiorari. The petition contains many statements of alleged testimony given by various witnesses in the trial court. It does not contain a concise statement of the case as required by this Court's rules. This obligation, thus falls upon the respondents. Respondents cannot refer to the transcript of record in this case, since a copy has not been furnished to them.

On October 21, 1958, petitioner filed a complaint in the Circuit Court in the Sixth Judicial Circuit of the State of Florida, alleging that respondents were responsible for damages to petitioner's furniture inventory stored in respondents' warehouse. A claim for loss of business and business profits

was also made.

Trial was held on March 19-22, 1962, at which time plaintiff was awarded Sixteen Thousand and no/100 ($16,000.00) Dollars in damages by a judge sitting without a jury.

Petitioner then appealed the court's decision to the District Court of Appeal, Second District of the State of Florida. The court rendered a per curiam opinion on June 10, 1966, (Re-hearing denied July 14, 1966) affirming the trial court's finding of fact. Easton v. Weir (1966 Fla App) 188 So.2d 1.

The District Court in affirming the lower court's finding of fact on the basis that there was conflict in the testimony given at the trial stated:

> "The two points on appeal concern only the issue of damages. Plaintiff contends that the trial court's inadequate award of damages requires

> a new trial on the issue of damages and that the trial court erroneously cast the burden of proof upon the plaintiff as to the issue of mitigation of damages."

Petitioner then filed a petition for writ of certiorari to the Supreme Court of Florida, on September 12, 1966. Since Florida appellate procedure requires that the District Court's opinion appealed from be in conflict with the decision of the Supreme Court or another District Court of Appeal, petitioner's inadequate petition was dismissed on motion by respondents on December 15, 1966. Rehearing was denied February 8, 1967. At this juncture, petitioner initiated the present proceedings.

ARGUMENT

DOES THE SUPREME COURT HAVE JURISDICTION SUFFICIENT TO GRANT PETITIONER'S PETITION FOR A WRIT OF CERTIORARI?

Petitioner seeks to have this Court review a decision of the District Court of Appeal of Florida, Second District, (Certiorari denied by Supreme Court of Florida) on the ground that the court applied the wrong principle of law requiring petitioner to prove mitigation of damages suffered by him and that the trial court inadequately assessed damages in his case.

The central issue presented at the present stage of the proceedings is whether, in fact, this Court has jurisdiction to consider the matter in that a federal question has been presented. Even though petitioner is without counsel in this case, it is important to press

the question of whether or not a federal question is presented and whether or not it was properly raised in the lower court. Respondents' position is that a federal question is not raised in these proceedings and that the violation of petitioner's constitutional rights has never been raised either in the trial court, the District Court of Appeal, or the Supreme Court of Florida. In this argument, brevity would seem to be not only a virtue, but a necessity.

A review of the opinion of the Second District (188 So.2d 1) which is the subject matter of the petition to this Court, clearly indicates that petitioner's appeal to the Second District was based upon two points: (1) the inadequacy of the damages awarded by the trial court; (2) the allegation that

the trial court improperly placed the burden upon the plaintiff as to the issue of mitigation of damages. The appeal sought to review a finding of fact by the trial judge. Petitioner failed to assert that he was deprived of his constitutional rights through the improper application of law. Further, in petitioner's petition for writ of certiorari to the Supreme Court of Florida no claim of the violation of a constitutional right was asserted.

It is fundamental that the record must establish that a federal question was presented in the court whose opinion is sought to be reviewed. Durley v. Mayo (Fla 1956) 76 S.Ct. 806, 351 U.S. 277, 100 L.Ed. 1178) Since the record before the Court clearly establishes that the question of violation of petitioner's

constitutional rights has been raised for the first time before this Court, the petition for writ of certiorari should be denied.

In Herndon v. State of Georgia, (Ga. 1935, 55 S.Ct. 794, 295 U.S. 441, 79 L.Ed. 1530), this Court speaking through Mr. Justice Sutherland stated:

* * * * * * * * * ,

> "It is true that there was a preliminary attack upon the indictment in the trial court on the ground, among others, that the statute was in violation 'of the Constitution of the United States,' and that this contention was overruled. But, in addition to the insufficiency of the specification, the adverse action of the trial court was not preserved by exceptions pendente lite or assigned as error in due time in the bill of exceptions, as the settled rules of the state practice require. In that situation, the state supreme court declined to review any of the rulings of the trial court in respect of that and other preliminary issues; and this determination of the state court is conclusive here. * * * (Citations omitted)

"The federal question was never properly presented to the state supreme court unless upon motion for rehearing; and that court then refused to consider it. The long-established general rule is that the attempt to raise a federal question after judgment, upon a petition for rehearing, comes too late, unless the court actually entertains the question and decides it. * * *" (Citations omitted)

* * * * * * * * * *

As pointed out above, the Second District Court of Appeal decided a question of fact applying local law. Such a determination has been held to be a decision on non-federal grounds which warrants dismissal of any petition for writ of certiorari. Deming v. Carlisle Packing Co. (1912 Wash., 33 S.Ct. 80, 226 U.S. 102, 57 L.Ed. 140; Skelly Oil Co. v. Phillips Petroleum Co., (1949 Okla., 70 S.Ct. 876, 339 U.S. 667, 94 L.Ed. 1194).

Finally in Bell Telephone Co. of Pennsylvania v. Pennsylvania Public

Utility Commission, (Penn. 1940) 60 S.Ct. 411, 309 U.S. 30, 84 L.Ed. 563), this court said:

* * * * * * * * *

"Appellant expressly disclaimed below, and also here, raising the question of confiscation. Its contentions are (1) that the Commission's order is wholly without support in the evidence and thus constitutes a denial of due process contrary to the Fourteenth Amendment; * * *

* * * * * * * * *

"As to the first contention, it appears that the state court heard the appeal judicially and decided that there was evidence justifying the finding of the Commission of unreasonable discrimination in the transaction of its intrastate business. In the absence of other constitutional objections, it cannot be said that a state court denies due process when on appropriate hearing it determines that there is evidence to sustain a finding of the violation of state law with respect to the conduct of local affairs. The contention that such a decision is erroneous does not present a federal question. * * *" (Citations omitted)

* * * * * * * * *

Thus in the case at bar, as in the Bell Telephone Co. of Penn. case, the Second District Court reviewed a trial court's determination of the evidence and facts and decided that since there was conflict in the evidence, the trial judge's ruling could not be disturbed.

CONCLUSION

The record before this Court indicates that any alleged violation of petitioner's constitutional rights is asserted for the first time in these proceedings.

Further, the determination of the sufficiency of the evidence by the Second District Court of Appeal of Florida in affirming the trial court's finding of fact is one of local law, constituting a determination of the case on a non-federal ground. Accordingly, this Court lacks jurisdiction in this case in the absence of a properly asserted federal question. The petition for writ of certiorari should be denied.

Respectfully submitted,

ROSS H. STANTON, JR.
Attorney for Respondents

PROOF OF SERVICE

I, Ross H. Stanton, Jr., attorney for EDWARD EARL WEIR, II, a minor, and MURIEL A. WEIR as guardian of the property of EDWARD EARL WEIR, II, a minor, respondents herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 5th day of Sept., 1967, I served copies of the foregoing brief to the Supreme Court of the United States on the party thereto, as follows:

On Alex K. Easton, petitioner, by mailing copy in duly addressed envelope, with first class postage prepaid.

Ross H. Stanton, Jr.
Of HARRISON, GREENE, MANN, DAVENPORT, ROWE & STANTON
The Tenth Floor
First Federal Building
St. Petersburg, Florida

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Office-Supreme Court, U.S.
FILED
SEP 29 1967
JOHN F. DAVIS, CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1967

NO. 337

ALEX K. EASTON, d/b/a
GEORGE EASTON FURNITURE CO.,

Petitioner

v.

EDWARD EARL WEIR, II, a minor
and MURIEL A. WEIR as guardian of
the property of EDWARD EARL WEIR, II,
a minor,

Respondent

PETITIONER'S REPLY BRIEF

ALEX K. EASTON

P. O. Box 3591
St. Petersburg, Florida 33731

Petitioner

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Respondent

PETITIONER'S REPLY BRIEF

ARGUMENT

DOES THE SUPREME COURT HAVE JURISDICTION SUFFICIENT TO GRANT PETITIONER'S PETITION FOR A WRIT OF CERTIORARI

The respondent argues that the Court was not given a concise picture of the denial of Constitutional rights. Yet in the case of Durley v. Mayo (Fla. 1956) 76 S.Ct. 806, 351 U.S. 277, 100 L.Ed. 1178 § 111, I read:

> 5. Even though the federal questions raised in a petition for habeas corpus are not set forth as clearly as they might be, the Supreme Court of the United States will not rely upon that inadequacy, where the petition was drafted by a layman acting for himself, and the substance of the claim is clear; the Supreme Court will not insist

upon more refined allegations than such a person could be expected to supply.

The respondent argues that the appeal to the District Court of Appeal of Florida, Second District, which we seek to have reviewed here (after having been denied certiorari in the Supreme Court of Florida) was to review a finding of fact by a trial judge; Petitioner contends it was not to review a finding of fact, but to review a mistake of law.

In his assignments of error to the District Court of Appeal of Florida, my attorney specified that the trial court had erroneously cast the burden of proof of mitigation of damages on me (petitioner) and that this had resulted in an inadequate judgment which did not make me whole. In other words, my attorney charged the trial court with applying the wrong rule of law by casting the burden of proof on the wrong party.

It is the law of Florida that the application of the wrong rule of law is a denial of due process. Matthews v. Metropolitan Life Ins. Co. (Fla., 1956), 89 So.2d 641-643 (quoted on page 17 of my petition for certiorari). This use of the wrong rule is a legal result which flows from such an error. Therefore, when I alleged the error, I alleged the legal result which attended it. In failing to correct the error, the District Court of Appeal of Florida perpetuated the denial of due process of law which attended it. Since the use of the wrong rule of law is a result of the primary error, this could not be assigned as error per se, however, because it is a consequence of the primary error. It could only be perpetuated by perpetuating the primary error. This due process implication of the primary error, however, embodies the Constitutional issue on which my petition here is grounded.

In Herndon v. State of Georgia (Ga., 1935) 55 S.Ct. 794, 295 U.S. 441, 79 L.Ed. 1530), this Court, speaking through Mr. Justice Sutherland, stated in Part:

> ". . . the adverse action of the trial court was not preserved by pendente lite or assigned as error in due time in the bill of exceptions, as the settled rules of the state practice require."

The petitioner contends that he did preserve the adverse action of the trial court by assignments of error in due time (exceptions are not required by the State of Florida); that he has preserved the Federal question and it may be reviewed here.

When the District Court of Appeal rendered its per curiam opinion on June 10, 1966, I (the petitioner) released my attorney, due to financial stress, and with absolutely no knowledge of law, my wife and I prepared the petition for rehearing and have since that time been our own counsel. I cried to the Court to look at the record, which showed that the defendants produced no evidence that I had failed to mitigate damages, although it was they who had raised this affirmative defense. Instead, the defense had used information given by me in confidence to help and protect the defendant landlord from her negligent contractor; they had banded together with the insurance and the independent contractor and painted a shame-shame picture to the judge. The insurance adjuster lied under oath, saying that he did not tell my employees and myself not to move the merchandise. This gave rise to the defense repeating and repeating, "Did you move it?" "Did you move it?" (referring to the water-soaked furniture) and tainted the case, when the truth of the matter was that the defendants never produced evidence that there was another place it could have been moved from the defendants' warehouse where it was damaged. On the other hand, I testified without contradiction that I had made a survey of the area and found no warehouse large enough to which the damaged and wet furniture could be moved, uncrated, dried out and repaired. Therefore, when the Florida courts drastically reduced the amount of damages to a lesser amount than my demonstrated losses, proved by the records of my business, they wrongfully

penalized me, the petitioner, for failing to disprove an affirmative defense, upon which the defendants had the burden of proof.

The Florida Supreme Court requires that the district court's opinion appealed from be in conflict with the decision of the Supreme Court, or another district court. Our certiorari was insufficient and dismissed--but in it, we again argued that the burden of proof had been improperly placed on us concerning the mitigation of damages, which is an affirmative defense. At this court, again we argued that the $16,000.00 awarded would not make us whole. The Court said in Fisher v. City of Miami:

> "In proceeding to a judgment here we should recall that the primary basis for an award of damages is compensation. That is, the objective is to make the injured party whole to the extent that it is possible to measure his injury in terms of money. Compensatory damages are recoverable as a matter of right."
>
> Fisher v. City of Miami, Fla., 172 So.2d 455

Even in my ignorance of law, the question was still presented, though not in specific words (San Jose' Land and W. Co. v. San Jose' Ranch Co., 23 S.Ct. 487, 189 U.S. 177, 47 L.Ed. 765 (1903), etc., refer to page 17a in my certiorari to this Court), that the burden of proving mitigation of damages had been misplaced; therefore, the Court would have, in their understanding of law, fully considered the question when they denied certiorari and ruled against me.

In my petition for rehearing to the Florida Supreme Court, I again cried, "Look at the record; there is no evidence presented by the defense that there was a place to move the wet furniture; there is no evidence presented by the defense to show that he sustained his affirmative defense of mitigation."

I have filed with your Court the entire record of testimony, along with exhibits and the financial statements of my furniture business, which were presented at the time of trial, so that you may examine the record.

I, petitioner, was not required by the rules of this

Court to furnish the respondent this record, as he intimated, but I have served him with an itemized list of the record I have filed.

Using the sample case furnished me by this Court as a guide for preparing my writ of certiorari, in the Statement of the Case, with the help of the Lord I have selected quotes from the testimony to form the picture, knowing in this Court's wisdom they will recognize the injustices. The very nature of this case is such that each time I argued that the burden had been misplaced, I said the wrong rule of law has been applied. Florida Supreme Court holds that this is a denial of due process. Matthews v. Metropolitan Life Ins. Co., supra. Since I have been denied due process in the State of Florida, it follows that I have been denied the security provided by our Constitution in the Fourteenth Amendment. The application of the wrong rule of law resulted in the grossly inadequate judgment of $16,000.00, when my proven losses were in excess of $227,000.00. This will not make me whole and the provisions of the Fourteenth and Fifth Amendments have been denied me.

CONCLUSION

For the reasons given, I contend that the Federal questions were timely raised and certiorari should be granted.

Respectfully submitted,

ALEX K. EASTON
P. O. Box 3591
St. Petersburg, Fla. 33731

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing Petitioner's Reply Brief has been furnished the law firm of Harrison, Greene, Mann, Davenport, Rowe & Stanton, Tenth Floor, First Federal Building, St. Petersburg, Florida,

by mail, this 28th day of September, 1967.

Alex K. Easton

Alex K. Easton, Petitioner
P. O. Box 3591
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